

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

IN RE:

CIRCUIT CITY STORES, INC., et al.

Debtors.

Case No. 08-35653-KRH

Chapter 11 (Jointly administered)

**OBJECTION OF LANDLORD, RAMCO JW, LLC
TO DEBTORS' SCHEDULE OF CURE AMOUNTS**

Landlord, RAMCO JW, LLC ("Landlord"), by its undersigned counsel, Kupelian Ormond & Magy, P.C. and Kaufman & Canoles P.C., hereby submits its Objection to the Debtors' Schedule of Cure Amounts (the "Schedule") as follows:

1. On or about November 10, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to act as debtors-in-possession pursuant to Bankruptcy Code §§1107 and 1108.

2. Landlord and Debtor, Circuit City Stores, Inc., are parties to a Lease Agreement dated October 1, 1996 (the "Lease"), pursuant to which Landlord is a lessor for one of the Debtors' locations which is located at an address commonly known as 1511 Boardman Rd., Jackson, MI 49202 in the Jackson West shopping center (identified on the cure amount schedule as store number 3722).

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3. The Landlord's premises is located in a shopping center, as that term is used in 11 U.S.C. §365(b)(3). See *In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990). Accordingly, the Landlord is entitled to the protections that Bankruptcy Code §365(b)(3) grants to landlords of shopping centers.

4. On November 26, 2008, the Debtors filed the *Debtors' Motion for Orders Under 11 U.S.C. Sections 105, 363, and 365 (i) Approving Bidding and Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases for Closing Stores, (ii) Setting Sale Hearing Date, and (iii) Authorizing and Approving (a) Sale of Certain Nonresidential Real Property Leases Free and Clear of Liens, Claims, and Encumbrances, (b) Assumption and Assignment of Certain Unexpired Nonresidential Property Leases, and (c) Lease Rejection Procedures* (the "Motion"), seeking among other things, an order establishing cure amounts with respect to certain of the Debtors' real property leases, including the Debtors' lease with the Landlord [D.I. 413]

5. Landlord hereby objects to Debtors' proposed cure amount identified on the schedule to the Motion, in the amount of \$19,402.00.

6. As of the date of the objection, the correct cure amount is set forth below (each a "Cure Claim" and collectively "Cure Claims". The claim set forth is the base cure claim amount subject to additional qualifications and modifications (such as reimbursement of attorney's fees) as more fully set forth below:

Debtors' Store #	Landlord	Shopping Center	Landlord's Cure Claim	Debtors' Cure Claim	Exhibit
3722	Ramco JW, LLC	Jackson West	\$ 70,791.05 (Base Rent \$46,518.90; CAM \$ 3,129.60; Interest \$660.00; Taxes \$6,572.91; Electrical \$8,257.18; CAM Reconcil. \$1,652.46; Attorneys Fees \$4000)	\$ 19,402.00	A

7. Landlord reserves its right to amend its Cure Claims to account for year-end adjustments, including without limitation, adjustments for the year 2008 and further amounts allowed by applicable bankruptcy and non-bankruptcy law, which have not yet been billed or have not yet become due under the terms of the Lease.

8. Section 365(b) requires that a debtor cure all defaults in conjunction with a lease assumption. Since certain accrued, unbilled items may not have been invoiced to date, there can be no default for the failure to pay same. Nevertheless, Debtors and any proposed assignee must acknowledge, and any Order approving Cure Claims and assumption or assumption and assignment of any Landlords' Leases should provide, that the proposed assignee (or Debtors, if they assume the Leases themselves) shall be liable for the unbilled items, even though they may cover, wholly or partially, a pre-petition and/or pre-assumption period of time, and that payment of year end adjustments will be made by the assignee when due pursuant to the terms of the Leases.

9. Landlord further requests that it be reimbursed as part of the Cure Claim for all of its actual pecuniary losses, including, but not limited to, attorneys' fees and costs expended with regard to Debtors' bankruptcy proceedings.

10. In addition to monetary obligations that Debtors must satisfy under Section 365 of the Bankruptcy Code, Landlord's Lease also provides that Debtors must indemnify and hold Landlord harmless with regard to existing claims as well as with regard to events which may have occurred pre-assumption but which are not made known to Landlord or Debtors until some period post-assumption. Accordingly, either the assignee must assume all indemnification liabilities or Debtors must be required to evidence, or obtain adequate insurance in order to guaranty that their indemnity responsibilities will be met. Claims for indemnity may include, but are not limited to, claims for personal injuries which occur at the leaseholds, where Landlord is joined as a party defendant, damage, and destruction to the property by Debtors or their agents, claims for environmental damage or environmental clean up *etc.*

11. Landlord joins the objections filed by the Debtors' other landlords, to the extent that they supplement and are not otherwise inconsistent herewith.

12. Landlord reserves the right to increase or further reconcile the cure claims set forth herein for items such as, but not limited to, claims for rent, taxes, common area maintenance, costs, fees, and any additional cure amounts due under the Lease, as Debtors are still in the property and are accruing expenses. Landlord also reserves the right to object to any proposed assignee.

WHEREFORE, Landlord respectfully request entry of an order establishing the cure claims for its Lease to be set at the amount set forth above, together with attorneys' fees, any additional pecuniary losses and such additional amounts as may become due prior to any Lease assumption and/or assignment; and such other and further relief as may be just and required under all circumstances.

Dated: December 10, 2008

**Kaufman & Canoles, a
professional corporation**

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Objection of Landlord, Ramco JW, LLC to Debtors Schedule of Cure Amounts* was sent first-class, postage prepaid, U.S. Mail on this 10th day of December, 2008 to those parties listed on Schedule 1 and to all creditors and parties-in-interest who are included in the Bankruptcy Court's ECF e-mail notification system.

Dated: December 10, 2008

By: /s/ Paul K. Campsen

SCHEDULE 1

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RE: Circuit City Stores, Inc.
dba Circuit City #3722
JACKSON West - Jackson, MI
37401

FILED CHAPTER 11 - 11/10/2008
LEASE EXPIRES - 1/31/2018
LEASE ASSUMED -
TENANT VACATED -
LEASE REJECTED -
SECURITY DEPOSIT - \$0

PERIOD	CHARGE TYPE	AMOUNT	PRE-PETITION BALANCE THRU 1/21/08	PAID POST-PETITION	DUE POST-PETITION FROM 11/10/08
10/11/2008	Electric 9/13 - 10/11/08	4,278.88	4,278.88	0.00	0.00
11/1/2008	Base Rent	23,259.45	6,977.88	0.00	16,281.57
11/1/2008	Common Area Maintenance	1,564.80	469.44	0.00	1,095.36
11/15/2008	Electric 10/11 - 11/15/08	3,978.30	3,425.76	0.00	552.54
11/15/2008	Winter Taxes (estimate)	6,572.91	0.00	0.00	6,572.91
12/1/2008	Base Rent	23,259.45	0.00	0.00	23,259.45
12/1/2008	Common Area Maintenance	1,564.80	0.00	0.00	1,564.80
12/1/2008	2008 YE Cam Reconciliation	1,652.46	0.00	0.00	1,652.46

TOTAL DUE	\$ 66,131.05	\$ 15,151.96	\$ -	\$ 50,979.09
PRE-PETITION	\$ 15,151.96			
POST-PETITION	\$ 50,979.09			
SUBTOTAL	\$ 66,131.05			